

ACTION

§ 1215.2

- 1215.5 Record request and response procedures.
- 1215.6 Time limits and extensions.
- 1215.7 Schedule of fees.
- 1215.8 Business information.
- 1215.9 Appeal procedures.
- 1215.10 Records which may be exempt from disclosure.

APPENDIX 1(A) TO PART 1215—FREEDOM OF INFORMATION ACT REQUEST LETTER (SAMPLE)

APPENDIX 1(B) TO PART 1215—FREEDOM OF INFORMATION ACT APPEAL LETTER (SAMPLE)

AUTHORITY: Pub. L. 93-113, 87 Stat. 411 (42 U.S.C. 4951, et seq.); 42 U.S.C. 5042 (13); and 5 U.S.C. 552.

SOURCE: 55 FR 20153, May 15, 1990.

§ 1215.1 Purpose.

The purpose of this part is to prescribe rules for the inspection and copying of opinions, policy statements, manuals, instructions, and other records of ACTION pursuant to the Freedom of Information Act (5 U.S.C. 552). Information customarily furnished to the public in the regular course of ACTION's official business may continue to be furnished to the public without complying with this part, provided that the furnishing of such information would not violate the Privacy Act of 1974 (5 U.S.C. 552a). Rules for the disclosure by ACTION of records protected by the Privacy Act are set forth at 45 CFR part 1224.

§ 1215.2 Definitions.

As used in the part, the following definitions shall apply:

- (a) *The Act* means the Freedom of Information Act (5 U.S.C. 552).
- (b) *The Agency* means ACTION.
- (c) *Records* include all books, papers, maps, photographs or other documentary material, or copies thereof, regardless of physical form or characteristics, made or received by ACTION and preserved as evidence of its organization, functions, policies, decisions, procedures, operations or other activities; but do not include books, magazines, or other materials not produced by ACTION and acquired solely for reference purposes.
- (d) *Search* means time spent locating records responsive to a request, including page-by-page or line-by-line identification of responsive material within a record.

(e) *Review* means the process of examining records located in response to a request to determine whether any record or portion of a record is permitted to be withheld. It also includes processing records for disclosure (i.e., excising portions not subject to disclosure under the Act and otherwise preparing them for release). Review does not include time spent resolving legal or policy issues regarding the application of exemptions under the Act.

(f) *Commercial use request* means a request from, or on behalf of, a person who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. The use to which a requester will put the records sought will be considered in determining whether the request is a commercial use request.

(g) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, or an institution of vocational education, which operates a program or programs of scholarly research.

(h) *Non-commercial scientific institution* means an institution that is not operated on a for-profit basis and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(i) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast information that is about current events or that would be of current interest to the public. Examples of news media entities include television and radio stations broadcasting to the public at large, and publishers of periodicals (but only those publishers who qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as new methods of news dissemination evolve (e.g., electronic dissemination

of newspapers through telecommunications services), such alternative media would be included in this category. “Freelance” journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the Agency may also look to the past publication record of a requester in making this determination.

(j) *Business information* means trade secrets or other commercial or financial information.

(k) *Business submitter* means any commercial entity which provides business information to ACTION and which has a proprietary interest in such information.

(l) *Appeal* means the appeal by a requester of an adverse Agency determination on his/her request, or on his/her application for a waiver of fees, as described in 5 U.S.C. 552(a)(6)(A)(ii).

§ 1215.3 Availability of records.

(a) All publications and other documents heretofore provided by ACTION to the public in the normal course of Agency business will continue to be made available upon request to the Agency.

(b) The Agency will promptly make available to any member of the public who requests them, the following Agency records:

(1) Final opinions and orders made in the adjudication of cases;

(2) Statements of policy and interpretation adopted by an office which have not been published in the FEDERAL REGISTER; and

(3) Administrative staff manuals and instructions to the staff which affect the public.

(c) A current index, which shall be updated at least quarterly, of the foregoing materials, is maintained by the Agency, and copies of same or any portion thereof will be furnished upon request. The Agency deems further publication of such index in the FEDERAL REGISTER unnecessary and impractical.

(d) To the extent necessary to prevent a clearly unwarranted invasion of personal privacy, the Agency may de-

lete identifying details from materials furnished under this section.

(e) Brochures, leaflets, and other similar published materials shall be furnished to the public on request to the extent they are available. Copies of any such materials which are out of print shall be furnished at the cost of duplication, provided, however, that, in the event no copy exists, the Agency shall not be responsible for reprinting the document.

(f) All records of ACTION which are requested by a member of the public in accordance with the procedures established in this part shall be timely made available for inspection or copying, at the Agency’s option, except to the extent that the Agency determines such records are exempt from disclosure under the Act.

(g) The Agency will not be required to create new records, compile lists of selected items from its files, or provide a requester with statistical or other data (unless such data have been compiled previously and are available in the form of a record, in which event such data shall be made available as provided in this part).

§ 1215.4 Location of records.

(a) The Agency maintains a central records room at its headquarters, located at 1100 Vermont Avenue NW., Washington, DC 20525. The specific location of the central records room may change from time to time, but may be ascertained by inquiry to the receptionist in the Office of the Director, ACTION.

(b) The Agency maintains regional offices in the following locations:

Region I—Boston, Massachusetts (Connecticut, Maine, Massachusetts, New Hampshire, Vermont and Rhode Island)

Region II—New York, New York (New Jersey, New York, Puerto Rico and Virgin Islands)

Region III—Philadelphia, Pennsylvania (Delaware, District of Columbia, Kentucky, Maryland, Ohio, Pennsylvania, Virginia and West Virginia)

Region IV—Atlanta, Georgia (Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina and Tennessee)